The Report of The Chief Electoral Officer

on the
Thirty-Second
Provincial General Election
September 6, 1988

Nova Scotia

Report

of the

Chief Electoral Officer

on the conduct
of the September 6, 1988
Provincial Election
including
Recommendations
Respecting Amendments
to The Elections Act

December, 1989

90-03276/

Nova Scotia

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December 21, 1989

The Hon. Arthur R. Donahoe, Q.C.
Speaker of the House of Assembly
Province of Nova Scotia
Halifax, Nova Scotia

Dear Mr. Speaker:

I have the honour to submit my report on the administration of my office for the period since September 6, 1988, the date of the 32nd General Election held in the Province of Nova Scotia. This report is submitted in accordance with Section 156(1) of the Nova Scotia Elections Act.

Respectfully yours,

Cherry G. Ferguson

CGF:rh

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I INTRODUCTION

The 1988 Election Returns published in accordance with Section 155(c) of the Elections Act and this Report regarding the conduct of the general election pursuant to Section 156(1), together comprise the complete report on the thirty-second provincial general election.

As detailed in the 1988 Election Returns, it is noted that 75.76% of the registered electors voted in the general election, as compared to 67.52% in 1984, and 74.1% in 1981.

623,586 electors were registered to vote and 472,437 electors voted. There were 55 special polls; 118 advance polls and 2,722 polling stations on ordinary polling day, September 6, 1988.

Since the thirty-second general election, what has been identified is a critical need for more intensive training and improved operational manuals for Returning Officers, Deputy Returning Officers, Presiding Officers, Enumerators and Official Agents. The position of these election officers requires commitment and knowledge of the Elections Act. While human error is inescapably an integral part of any process - the electoral process being no exception - every effort is being made and will continue to be made to mitigate mistakes and improve the administration of elections. It must also be recognized that the electoral process is becoming increasingly complex and demanding on election officials as responsibilities for serving both electors and candidates are constantly expanding.

Administrative matters have also been discussed with members of the Election Commission and the Commission in connection with the thirty-second general election also considered reports of the RCMP with respect to alleged violations of the Elections Act in two electoral districts - Guysborough and Shelburne. Prosecutions

followed against two individuals in Guysborough and five individuals in Shelburne.

Election finances are matters of paramount importance and every effort is and will continue to be made to remind official agents of candidates and political parties, and political party workers, of their legal responsibilities and accountability under The Elections Act. Policies and manuals are under review to clarify and where necessary to revise procedures for more effective administration.

This Report also addresses proposed amendments to The Elections Act, many of which are predicated on the plethora of litigation involving the Canadian Charter of Rights and Freedoms.

Provisions such as Section 26 disqualifying persons from voting have dominated Canadian electoral case law but Charter arguments have extended to the process of enfranchising electors generally. Accordingly, this report not only addresses proposed amendments to Section 26 but also Revision, Special and Advance polls, proxy voting, and other administrative aspects of the electoral process.

It is expected that the Canadian Charter of Rights and Freedoms will continue to have dramatic impact on the electoral process in Nova Scotia. It is imperative that legislative changes be reviewed promptly and in this context.

II QUALIFICATIONS OF AN ELECTOR

Presently under Section 26 of the Elections Act of Nova Scotia, the following persons are not entitled to be registered as electors:

(a) the Chief Electoral Officer;
(b) a Returning Officer;
(c) a judge of the Supreme or County Courts;
(d) a person undergoing punishment in a penal or reform institution; or
(e) a person who is legally restrained of his liberty of movement or deprived of the management of his property by reason of mental illness.

There have been numerous court challenges based upon the Canadian Charter of Rights and Freedoms on the issue of disqualification, and particularly with respect to persons on remand or those undergoing punishment in a penal institution.

The Supreme Court of Canada has yet to rule on the issue of prisoner rights but it is one deserving discussion. Amendments to Section 26 are appropriate. It is suggested that the Nova Scotia Elections Act must be brought in line with the Canadian Charter of Rights and Freedoms.

While Nova Scotia did not experience the Charter litigation which ensued concurrent with and following the Federal Election in November 1988, it is critical to emphasize that the provisions which have been challenged are identical to Section 26 of the Nova Scotia Elections Act. It is also important to point out that in its 1986 report to the House of Assembly, the Election Commission recommended the repeal of Section 26.

When addressing the issue of judicial decisions and the impact of the Charter of Rights vis-a-vis the Canada Elections Act, Mr. Jean-Marc Hamel, the Chief Electoral Officer of Canada in his 1989 report to the House of Commons stated: "The longer the legislation to

amend the Act is delayed, the more the integrity of the electoral process is threatened and the more the Legislative direction of the electoral process is likely to be overtaken with decisions of various levels of the court system. Major court challenges during the 1988 Election involving the democratic rights of judges, the mentally handicapped and inmates of correctional institutions clearly illustrate the havoc which could ensue if legislative action is delayed any longer." (page 10).

During the 32nd general election in Nova Scotia in September, 1988, issues were raised directly with the Chief Electoral Officer by those who are presently disqualified such as those on remand, and judges and the mentally handicapped.

Recommendation:

1. Section 26 of the Elections Act should be repealed, subject however, to the Legislative Assembly deciding what, if any, restrictions should apply to prisoner voting.

III PRISON INMATES

Section 26(d) of the Nova Scotia Elections Act disqualifies from voting "a person undergoing punishment in a penal or reform institution".

An inmate on remand is awaiting trial and has either been denied bail or has been unable to raise bail.

During the 1988 general election, questions were raised as to the right of remanded inmates to vote. While arguably an inmate on remand has the right to vote by law in Nova Scotia, no administrative mechanism is in place to allow for this, so effectively the right is denied.

Remanded prisoners do have the right to vote in most provinces - Ontario, New Brunswick, Saskatchewan, Alberta, British Columbia, Manitoba, the Northwest Territories and the Yukon. The methodology of providing for remanded prisoners to vote varies from one jurisdiction to another. For example - in Ontario this is conducted by proxy; and in New Brunswick, a mail-in ballot.

In the provinces of Newfoundland and Quebec, all prisoners have the right to vote. In British Columbia, persons convicted of treason or of an indictable offence are disqualified from voting unless released on probation or parole and not in custody.

Litigation in Canada with respect to the issue of disqualification has focused on prisoners' rights to vote. The provisions disqualifying prisoners are identical to Section 26 of the Nova Scotia Elections Act.

The rationale and arguments under the Canadian Charter of Rights and Freedoms focus primilarly on Section 3 and Section 1.

Section 3 of the Charter of Rights and Freedoms states:

> Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a Legislative Assembly and to be qualified for membership therein.

Section 1 provides:

> The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The cases therefore have focused on Section 3 quaranteeing the right to vote - subject to Section 1 which is the 'reasonable limits' provision (as can be demonstrably justified in a free and democratic society.) Regarding the right of inmates to vote, the constitutional validity of the disqualification of depriving the person who is incarcerated from voting, has been challenged.

Discussion:

A brief review of the major court cases and the legislative action taken is provided:

In September, 1988 in the case of Arnold Badger et al. v. The Attorney General of Canada and the Chief Electoral Officer of Canada, the Manitoba Queens Bench ordered that Section 31(d) of the Manitoba Elections Act was unconstitutional and that prisoners did have the right to vote. Subsequently, the Manitoba Court of Appeal on November 18, 1988 ordered that Section 1 of the Charter of Rights (re the reasonable limits provision) did apply to the Provincial legislation and upheld the constitutional validity of the provisions disqualifying prisoners from voting.

An appeal to the Supreme Court of Canada in Badger was denied on June 8, 1989.

It is important to point out that in Badger, the relevant section of the Manitoba Elections Act disqualifying prisoners from voting was similar to that in Nova Scotia and there was no distinction as to the type of penal institution, the type of offence or the length of sentence, which was at issue. Mr. Justice Hurshfield, however, in the Manitoba Court of Queens Bench decision of Badger stated that "had the words penal institution been defined to mean only a Federal penitentiary, and had "any offence" been defined to mean an indictable offence, the result...would have been radically different."(page 10).

The decision of the Manitoba Queen's Bench, however, was sucessfully appealed to the Manitoba Court of Appeal on November 18, 1988 thus upholding the constitutional validity of the restriction on the right to vote of inmates. Regarding the substantive issue of enfranchising or disenfranchising all or certain prisoners, the Court of Appeal felt that this task should be left to the elected members of parliament.

In Ontario, the Supreme Court of Ontario heard the case of Richard Sauve v. the Attorney General of Canada et al in November 1988. This case involved a plaintiff serving life imprisonment for first degree murder and he was denied the right to vote. The provisions of the Canada Elections Act (re disqualification) were declared constitutional.

Of interest were remarks by Madame Justice Van Camp in Sauve who also relied on a previous decision of R. Oakes (1986) 1 S.C.R.103. It was the opinion of Madame Justice Van Camp that the rights and freedoms guaranteed by the Charter are not absolute and this disqualification of a criminal from voting, "...reinforces the concept of a decent responsible citizenry essential for..... democracy"(page 8). It is therefore argued that the state has a role in preserving itself by symbolic exclusion of criminals from the right to vote for the law-makers.

In a further decision of Gary Grondin v. Attorney General of Ontario et. al. (65 O.R. 2d 427) the Supreme Court of Ontario in July 1988 ruled as unconstitutional the provision of the Ontario Elections Act disqualifying inmates under sentence from voting. The decision of Mr. Justice Bowlby left to the legislature, the appropriate mechanism for enfranchising prisoners. In the Grondin case the plaintiff was a Canadian citizen who on April 27, 1988 was sentenced to a total of five years imprisonment for robbery and use of a firearm while committing an indictable offence. The Court placed no distinction however on (a) whether the prisoner has been convicted of an indictable or summary conviction offence (b) the length of sentence or (c) type of incarcerating facility - i.e. Federal or Provincial institution. The method of enfranchising prisoners was left to the legislature to address. Because the court ruled as unconstitutional, the applicable provision of the Ontario Elections Act, the matter was then referred in 1989 to a Standing Committee of the Ontario Legislative Assembly. In December, 1989 recommendations were made from the Standing Committee which included amendments to the Ontario Elections Act to expand residency requirements to apply to inmates and to broaden the proxy provisions.

The issue of prisoner voting, while not definitively settled, is by necessity, being addressed by Legislatures in Canada. The Courts are ordering Legislatures to address this disqualification, commonly entrenched in election laws across the Country.

The limits, if any, to prison voting is another element which the Courts have indicated is a matter for the Legislatures to address.

Compelling arguments have been made that the disqualification should continue to apply to those persons charged with indictable offences and/or incarcerated in a Federal institution. The length of sentence is a further element which may be taken into consideration in reaching an overall conclusion that limits to prisoner voting are justified in the interests of society and democracy. Hence, one may argue that Section 3 of the Canadian Charter of Rights and Freedoms - the right to vote - is saved by Section 1 - the imposition of

reasonable limits as can be demonstrably justified in a free and democratic society.

Bill C-79, (An Act to amend the Canada Elections Act and other Acts related thereto) was introduced in the House of Commons on June 30, 1987 but died on the order paper and did not become law prior to the 34th General Election federally. However, the proposed amendments addressed the disenfranching and enfranchising of prisoners in the following way: The disqualification was to apply to persons undergoing punishment as an inmate in any prison within the meaning of the criminal code for the commission of any offence.

With respect to remanded inmates, as outlined, the law of most Canadian jurisdictions allows for voting. This is often accomplished by proxy. In Nova Scotia, to enfranchise remanded inmates would require (a) amendment of the proxy provisions unless another mechanism is chosen to implement this voting right; and, (b) amendment of the residency provisions to address the issue as to the electoral district in which the inmate may cast his/her vote.

Residency is one of a number of issues to be legislatively addressed in the event that Section 26 of the Nova Scotia Elections Act is amended or repealed to allow for voting of remanded prisoners and other inmates. In its recent report following the Grondin decision, the Standing Committee of the Legislative Assembly in Ontario recommended that the residency requirement be governed not by the Electoral District of the incarcerating institution but rather the electoral district where the inmate was resident immediately before incarceration, unless the inmate's family resided elsewhere, in which case the "residence" provisions of the Ontario Elections Act would apply. The 'ordinary residence' test under the Nova Scotia Elections Act is similar and could appropriately be amended to enable a prisoner to vote in an Electoral district other than that of the incarcerating institution, if that was the decision of the Legislative Assembly.

It must also be noted that inherent in extending voting rights to prisoners is the necessity for a legislated voting procedure - be it through proxy, mail-in ballot, special voting rules or actual polling stations within institutions. Superimposed upon this are practical but not insurmountable considerations of confidentiality and security.

Recommendation:

2. Remanded inmates should be provided the right to vote, and appropriate administrative procedures should be implemented to enfranchise these individuals. The following is recommended:

(a) amendment of Section 26(d) of the Elections Act, to clarify that remanded inmates have the right to vote.

(b) amendment of the proxy provisions (SS.93-98 of the Elections Act) or legislatively provide for a different mechanism to enfranchise the remanded inmate.

(c) amendment of the ordinary residence provisions to include remanded prisoner (S.27 of the Elections Act).

3. With respect to the right to vote of prisoners under sentence, the Legislative Assembly should decide what, if any, restrictions should apply, and accordingly either repeal or amend Section 26(d) of the Elections Act. If it is decided that inmates under sentence should be enfranchised, the Elections Act should be amended to provide for the necessary administrative mechanism and governing residency requirements.

IV MENTALLY HANDICAPPED ELECTORS

Section 26(e) of the Elections Act disqualifies from voting "a person who is legally restrained of his liberty of movement or deprived of the management of his property by reason of mental illness."

The Election Commission in its 1986 report to the House of Assembly recommended repeal of this provision.

The provision which is also consistent with legislation in other jurisdictions and federally was addressed by the Federal Court of Canada, October 17, 1988 in Canadian Disability Rights Council et al v. Her Majesty The Queen in Right of Canada. As a result, persons who were patients in psychiatric hospitals were enfranchised during the 1988 federal general election.

In this case arguments, similar to those regarding prisoner voting, were made both with respect to application of Section 1 and Section 3 of the Canadian Charter of Rights and Freedoms. The Federal Court ruled that the limitation as provided under the Canada Elections Act (which is identical to the Nova Scotia provision) may be a requirement of mental competence or judgmental capacity, but as drafted it does not address itself only to mental incompetence or capacity insofar as that quality is required for the purposes of voting. Rather the court stated that the provision was more broadly framed than that and the provision"... does not deny all persons suffering from mental disease the right to vote, but only those whose liberty of movement has been restrained or whose property is under the control of a committee of estate. A person mentally handicapped or suffering from a personality disorder might be supported at home or cared for by his or her family"(page 2). The net result, according to the Court, was that the limitation imposed by that provision was arbitrary - "If it is intended as a test of mental competency, it is at the same time both too narrow and too

wide. It catches people within its ambit who should not be there and arguably it does not catch people who perhaps should be there."(page 3). The provision was held to be unconstitutional and again it is emphasized that this provision of disqualification is identical to that in the Elections Act of Nova Scotia.

The mechanism of enumerating, and protection of patient confidentiality are all factors of paramount importance which would be addressed in the event of legislative amendment.

Recommendation:

4. **Section 26(e) of the Elections Act should be repealed.**

V JUDGES

Section 26(c) of the Elections Act disqualifies from voting a judge of the Supreme or County Courts. The rationale is that a recount is conducted before a County Court Judge and an application for a controverted election is made before a Supreme Court judge. In the 1988 general election in Nova Scotia, some inquiries were made to the Chief Electoral Officer by judges, arguing they were disenfranchised from voting as a result of the existing provision.

This disqualification which again is consistent with other legislation in Canada, has also been challenged judically. In November, 1988 the Federal Court of Canada (F. Muldoon and N. Teitelbaum v. Her Majesty The Queen et. al.) ordered that a similar provision as it appears in Section 14(4)(d) of the Canada Elections Act was unconstitutional and of no force and effect. The Plaintiffs in this case were two judges of the Federal Court of Canada and the Canada Elections Act provision - Section 14(4)(d) disqualified "every judge appointed by the Governor-in-Council". The Canadian Charter of Rights and Freedoms was successfully argued and the Federal Court held that the provision of the Canada Elections Act was unconstitutional.

It is respectfully submitted that the expression of choice during a democratic voting process would not in itself demonstate that an individual could not be impartial. Many Judges may choose not to vote but it could very well be argued as has successfully occurred, that it is unconstitutional for an election act to include a provision disenfranchising judges from voting.

Recommendation:

5. Section 26(c) of the Elections Act should be repealed.

VI DISQUALIFICATION OF ELECTION OFFICIALS

Section 26(a) and Section 26(b) of the Elections Act disqualifies from voting, the Chief Electoral Officer and a Returning Officer. Under the present legislation the Returning Officer is also required where there is a equality of votes to give the casting vote and declare elected the candidate for whom he has given the casting vote (Section 152(2)).

As recommended in the 1986 report of the Election Commission, and as again discussed by the current Election Commission, it is suggested that the Returning Officer (and Chief Electoral Officer) be permitted to vote during an election and it should be the individual's decision as to whether it is appropriate for him or her to vote. Moreover, the provision regarding the equality of votes should be resolved by drawing names out of a ballot box or some other similar method where no individual choice is made.

Recommendation

6. Section 26(a) and Section 26(b) of the Elections Act should be repealed and Section 152(2) be amended to provide where an equality of votes exists, the tie is settled by drawing of one name from among the names of all candidates in that constituency.

VII REMOVAL OF BRITISH SUBJECT QUALIFICATION

Section 25(1)(b) of the Elections Act provides as follows:

25(1) Subject to Section 26, a person may have his name registered on the list of electors for a polling division if he ....

(b) is a Canadian citizen or other British Subject on or before ordinary polling day.

This matter was previously addressed in the 1986 report of the Election Commission and it is submitted, consistent with other legislation in Canada that the reference to British Subject should be removed.

The British Nationality Act, 1981, passed by the British Parliament, removed references to British Subjects and provided that citizens of designated countries including Canada, would have the status of "Commonwealth citizens". This legislation has changed both terminology and status. It represents the recognition of the independent existance of Commonwealth Countries.

In Canadian legislation, the expression "British Subject" was formally defined by reference to a list of countries in a schedule in the Canadian Citizenship Act. That Act was repealed and replaced in 1976 and a reference to a Commonwealth Country was substituted for the expression "British Subject". The Canada Elections Act was amended to remove the right of a British subject to vote, effective in 1975. The amendment provided for a five year period (1970-75) for persons to apply for Canadian citizenship. Therefore, if a British Subject was eligible to vote in a Federal election before 1970 and continued to reside in Canada, that person was given an opportunity to become a Canadian citizen.

It is submitted that the term "British Subject" is no longer appropriate and the Elections Act should accordingly be amended.

Recommendation:

7. Section 25(1)(b) of the Elections Act should be amended to remove the entitlement of British Subjects who are not Canadian citizens to vote.

VIII ENUMERATION AND NOTICE OF ENUMERATION CARDS

The initial enumeration during the 1988 general election was 608,201 electors. Enumeration has been identified as an area requiring more intensive training, changes in policies and procedures and amendment of applicable operation manuals.

The number of revisions between the 12th and 10th day before ordinary polling day as well as on polling day, September 6, 1988 was significant - namely 15,385 electors. In the cities of Halifax, Dartmouth and Sydney, two revising officers were sitting in each electoral district on ordinary polling day.

If a person has not been enumerated, and if that person is qualified to vote, then every effort should be made to have that person's name placed on the official list of electors.

Revising Agents

The Election Act does provide for a Returning Officer to appoint Revising Agents to conduct an enumeration where a substantial number of electors are omitted during the first enumeration. Section 41(1) of the Elections Act authorizes the Returning Officer to make the appointments where the Returning Officer is "aware that the name and particulars" have been omitted.

The Election Commission in its 1986 report recommended that it should not be necessary for the Returning Officer to know the names and particulars before appointing Revising Agents as this is the information which will be obtained. Accordingly it is recommended that Section 41(1) of the Elections Act be amended.

It is also suggested that duties of Revising Agents be clarified and that Section 41(3) be amended to include the requirement for Revising Agents to use all diligence to obtain the names and particulars by visiting each dwelling place and if the Revising

Agents are unable to obtain the names and particulars by the visits, then they may obtain them from other sources of information. (S. 31(3)(a)).

Clarification of the duties of Revising Agents is suggested in view of the fact that they do act as additional enumerators where the Returning Officer acknowledges that a particular area or section or that of a building containing multiple dwelling units has been missed by enumerators. The present Sections 41(3)(a), (b) and (c) would remain the same, but be renumbered.

Recommendation:

8. Section 41(1) of the Elections ACt should be clarified by the elimination of the words "the name and particulars of" (and amending the concluding words of Section 41(1) to conform to the beginning), thereby clarifying that the Returning Officer's authority is to appoint Revising Agents when the Returning Officer becomes aware that a substantial number of electors have been omitted from a list of electors or incorrectly described on a list, although the Returning Officer may not have the knowledge of the actual names of those electors.

9. (a) Section 41(3) of the Elections Act should be amended by including a new subsection (a) to provide for Revising Agents to use all diligence to obtain the names and particulars by visiting each dwelling place and if the Revising Agents are unable to obtain the names and particualrs by the visits, then they may obtain them from any other sources of information, (b) Section 41(3)(a), 41(3)(b) and 41(3)(c) of the Elections Act should be renumbered as Section 41(3)(b), 41(3)(c) and 41(3)(d).

Notice of Enumeration Cards

Notice of enumeration cards were utilized for the first occasion during the 1988 general election and mailed to approximately 609,000 electors.

The cards replaced the former lists which were circulated to electors and the card, a copy of which is attached in Schedule "A" provided pertinent information to the elector. The recommendation for the use of the card had been included in the 1986 report of the Election Commission.

The purpose of the card was to facilitate the electoral process, but the cards were not required for voting. The card provided relevant information regarding the date of ordinary polling day; the poll number applicable to the elector; the location of the advance and special poll; location of the poll on ordinary polling day; the location of the revisal sittings and the name and telephone number of the Returning Officer.

In addition, it confirmed to the elector that the person's name was included on the official list of voters.

There were occasions, however, during the 1988 general election where Notice of Enumeration cards were sent to an enumerated elector, but the elector's name, due to a clerical error, failed to appear on the official list of electors. In a few circumstances, this did present a problem at the advance and special poll.

A Revising Officer does sit during most (but not all) hours of the special poll and the Act also provides for a mechanism of voting where a person's name is not on the list on election day. This was not always convenient for the elector however, and the elector may have gone to the advance poll, erroneously operating under the assumption, having received a Notice of Enumeration Card that

his/her name did appear on the official list. However, at the advance poll no legislative mechanism exists allowing a person to be revised or sworn in, notwithstanding that he/she was enumerated but whose name did not appear on the official list of electors.

Further, because the hours of the special poll and revisal sittings currently vary under the Elections Act, situations would arise where persons were disenfranchised from voting because it was not possible to have the elector's name added to the official list, thereby enabling the elector to vote at the special poll.

To overcome this problem, legislative amendments are suggested, and improved procedures to ensure complete and accurate lists of electors are expected to be implemented. This matter has also been discussed with members of the Election Commission.

Recommendation:

10. The hours of the revisal sittings should be concurrent with the hours of the special poll (Sections 48 and 138A).

IX SPECIAL AND ADVANCE POLLS AND REVISION

The special poll is currently held on the 12th, 11th and 10th days before ordinary polling day.

The advance poll occurs on the 4th and 3rd day before ordinary polling day.

The hours of the special and advance polls are not consistent nor are the revisal sittings which are only contemporaneous with the special poll.

In summary:

The hours of the special poll are as follows: (Section 138A(1)) -

Thursday, 12 noon - 9:00 p.m.
Friday, 12 noon - 9 p.m.
Saturday, 9 a.m. - 5 p.m.

The Hours of the advance poll are as follows: (Section 128) -

Friday, 2 p.m. - 10 p.m.
Saturday, 2 p.m. - 10 p.m.

Concurrent with the special poll, a Revising Officer is sitting in order to add to the list, the names of those who are are not on the official list of electors but who are qualified to vote and who wish to vote during the special poll. The hours of the revisal sittings, however, are not consistent with the hours of the special poll and it is submitted that certainly this should be the case. Presently the Act provides that on the 12th and 11th days before ordinary polling day (which includes one day of the special poll), a Revising Officer performs his/her duties between the hours of 11 a.m. - 1 p.m.; 2 p.m.- 6 p.m.; and 7 p.m. - 9 p.m. (Section 48).

It has been a practice to extend the revision to provide for a sitting as well on Saturday, the 10th day before ordinary polling day from 3 p.m. - 5 p.m.

Discussion:

Revisal Sittings - hours

It is submitted that sittings of the Revising Officer should be contemporaneous with the special poll and the hours should be the **same.** It is noted that this suggestion had been put forward in the 1983 report of the Election Commission.

The reasoning behind this recommendation is the paramount importance of not disenfranchising qualified electors. There is little rationale to maintain inconsistent hours where, in the same location, an individual may go to vote and yet when that person appears at the special poll to be revised and to vote, the Revising Officer may not be available.

Special and Advance Poll - hours

It is respectfully submitted that the hours of the special and advance polls should be changed.

Given the nature of today's society, the demands upon the public of Nova Scotia with working schedules and also the necessity for flexibility, it is recognized and this was pointed out during the 1988 general election, that the hours of the special and advance polls are no longer practical. It is suggested, and this would be consistant with legislation in other parts of Canada, that (a) the hours for both the special and advance polls; and, (b) the revisal sittings during the special polls - be from 8 a.m. to 8 p.m.

Advance Poll

Presently, as outlined, the Advance poll, pursuant to Section 128 of the Elections Act occurs on the Friday and Saturday before ordinary polling day. In view of public demands, and the compelling legal arguments to have in place the appropriate administrative mechanisms to enable qualified electors to vote, it is suggested that an additional third day for the advance poll would be advisable - namely, commencement of the advance poll on the Thursday (the fifth day) before ordinary polling day. The hours would be the same as the additional two days of the advance poll (Friday and Saturday), namely - 8 a.m. - 8 p.m. Accordingly Section 128 of the Elections Act should be amended.

Transfer Certificates and Proxies

It is suggested that the expiry time for the issuance of transfer certificates and proxy papers be the same as opposed to the present provision (Section 91) providing for the issuance of transfer certificates up to 10 o'clock on Saturday, the 3rd day before ordinary polling day and Section 95 providing for the issuance of proxies up to 8 p.m. on the same evening. The expiry time should be the same and 8 p.m. appears to be appropriate both for the issuance of proxies and transfer certificates.

Recommendation:

11. Section 48 of the Elections Act should be amended to provide for the Revising Officer to also sit on Saturday, the 10th day before ordinary polling day and also the revisal sitting hours should be amended in order to be consistent with the hours of the special poll from 8 a.m. to 8 p.m.

12. Section 128 and Section 138A should be amended to provide for the hours of the special and advance poll to be the same and changed to 8 a.m. to 8 p.m.

13. Section 128 of the Elections Act should be amended to provide for the commencement of the advance poll on Thursday, the 5th day before ordinary polling day (instead of Friday, the 4th day before ordinary polling day).

14. Section 91 of the Elections Act should be amended to provide for the issuance of transfer certificates up to 8 p.m. on the 10th day before ordinary polling day.

X PROXY VOTING

Expansion

Presently, Section [illegible] of the Elections Act provides that an elector may vote by proxy if he/she is:

(a) a fisherman or mariner serving in any capacity on a ship, licensed or registered in Canada or the British Commonwealth; or

(aa) employed on an offshore oil rig or platform;

(b) a patient in a hospital having ten or more beds;

(c) serving on full time service with the Naval, Army or Air Forces of Canada;

(d) a full time student at an educational institution;

(e) a resident in a home for the aged approved or a nursing home licensed under the Homes for Special Care Act;

(f) a person whose illness or physical incapacity prevents him from voting; or

(g) a person who is blind. R.S., c.83, s.93, 1977, c.28, s.24; 1987, c.19, s.3.

Form 39 which is an Application for Proxy includes the necessary confirmation certificate to be completed by specified officials (s. 94(2)).

During the 1988 general election several inquiries were made to the Chief Electoral Officer by persons who, due to business commitments, were unable to vote at either the special or advance polls or on ordinary polling day and proxies were requested. The Elections Act presently does not provide for such situations.

It is suggested that if a qualified elector is unable to vote at the special or advance polls or on ordinary polling day due to business commitments or employer's directions, and; provided the necessary confirmation certificate is obtained from the applicable employer,

that person should be granted the right to vote by proxy. Such a provision would be consistent with present legislation in Ontario (s.17(1)). Recommendations have been made by the Standing Committee of the legislature of Ontario to repeal the present provision of the Ontario Elections Act regarding proxies and to replace same with a provision allowing an elector who has reason to believe that he/she will be unable to vote at the advance poll or on polling day to apply to vote by proxy. Such an amendment is also consistent with Bill C-79 (re proposed amendments to the Canada Elections Act- 1987)

It is not suggested that the provisions governing proxies be expanded this far, but rather under the Nova Scotia law to be expanded to cover situations where persons are unable to vote at the special or advance polls, or on ordinary polling day due to business commitments or employer's directions. This proposed amendment has been discussed with members of the Election Commission and it was agreed that the expansion of proxy voting should include this element but not be further broadened.

Confirmation Certificate

It is noted that under Section 93 of the Elections Act an elector may vote by proxy if that person is "a resident in a home for the aged approved or a nursing home licensed under the Homes for Special Care Act" (Section 93(e)).

Confusion has arisen with respect to the confirmation certificate contained in Form 39 (Application for Proxy) and as outlined in Section 94(2). In that provision, a reference is made that the confirmation certificate is to be completed by "the person in charge of a home for the aged or a nursing home for a resident in that place". It is suggested that Section 94(2) be amended to read that the confirmation certificate in Form 39 is to be completed by the person in charge of a home for the aged approved or a nursing home licensed under the Homes for Special Care Act with respect to

the resident in that place. By doing so Section 94(2) would be consistent with the qualification of proxy voter as stated in Section 93.

Recommendations

15. Section 93 and Section 94 of the Elections Act should be amended to include the right to vote by proxy of an elector who is unable to vote at the special, or advance polls or on ordinary polling day by reason of business commitments or employer's directions. The application for proxy (Form 39) would accordingly require amendment including the confirmation certificate and a provision specifying that the elector declares that he/she is unable to vote at the special or advance polls or on ordinary polling day.

16. Section 94(2) of the Elections Act should be amended to specify that the application for proxy applies to a resident in a home for the aged approved or a nursing home licensed under the Homes for Special Care Act and Form 39 should be amended accordingly.

XI IDENTIFICATION OF PRINTER

Section 160 of the Elections Act states:

160 (1) Every printed advertisement, prospectus, placard, poster, pamphlet, handbill or circular relating to an election shall bear the name and address of the printer and of the person on whose behalf it was printed or published.

(2) Every advertisement relating to an election published in a newspaper or other publication shall mention the name and address of the person who has it published, and such name and address shall be mentioned at the beginning or at the end of any sponsored radio or television program relating to an election.

(3) No person shall publish or distribute any thing referred to in subsection (1) or (2) that does not conform to the requirements of the applicable subsection. 1969, c.40, s.5.

Considerable confusion has arisen, particularly in recent years, with respect to what election materials actually require the name and address of the printer and on whose behalf it was printed or published. In certain circumstances such as lapel buttons, it is not practical to place all the information on this form of advertising material.

It is suggested that Section 160(1) be amended to provide that unless excluded by the Chief Electoral Officer, upon specific written application, all printed material of an advertising or publicity nature relating to an election must bear the name and address of the printer and the name and address of the person on whose behalf it was printed or published.

It is important to also include in the amendment to Section 160 that notwithstanding any authorized exclusion, all literature, objects or materials used for the purpose of promoting or opposing directly or indirectly the election of a candidate, must be declared an election expense as defined in Section 2(7A) and be governed by the provisions of the Elections Act including but not limited to Sections 159-164.

Recommendation:

17. Section 160(1) of the Elections Act should be amended to provide;
160(1) Unless, excluded by the Chief Electoral Officer upon specific written application, any printed material of an advertising or publicity nature relating to an election shall bear the name and address of the printer and the person on whose behalf it was printed or published.

18. An additional provision should be added:
160(2) Notwithstanding any authorized exclusion, any and all literature, objects or materials used for the purpose of promoting or opposing directly or indirectly the election of a candidate, shall be an election expense as defined in Section 2(7A) and be governed by the provisions of the Elections Act, including but not limited to Sections 159-164.

19. Sections 160(2) and 160(3) should be renumbered.

XII OFFENCES ON POLLING DAY

Section 178 of the Elections Act states:

178 Every one is guilty of an offence, who during the hours of polling on ordinary polling day

(a) supplies, carries or wears any flag, ribbon, emblem, badge or like favor [favour] with the intent to distinguish the user as the supporter of a candidate or political organization;

(b) supplies, carries or uses a loud speaker, public address system, flag or banner with the intent that it be used to support a candidate or political organization;

(c) posts or displays in or within two hundred feet of a polling station or the building in which a polling station is situate, any literature, emblem, ribbon, flag, banner, card, bill, poster or device that supports a candidate or political organization; or

(d) organizes or participates in a parade or demonstration that supports a candidate or political organization. R.S., c.83, s.178.

Section 178(c) which relates to an offence on polling day should also apply to the special and advance polls.

There appears to be little rationale to restrict this offence to ordinary polling day exclusively - for example - displaying campaign posters within two hundred feet of a polling station.

Recommendation:

20. Section 178 of the Elections Act should be amended to provide that clause (c) be applicable not only on ordinary polling day but also during the special and advance polls.

XIII ADMINISTRATIVE MATTERS

Headquarters of Returning Officers

Section 19(2) of the Elections Act requires:

19(2) Either the returning officer or the election clerk, or both of them, remain continuously on duty in the returning officer's headquarters during the hours that

(a) the revising officer sits for the revision of the lists of electors;

(b) the advance polls are open; and

(c) the polls are open on ordinary polling day.

It is suggested that the responsibilities of the Returning Officer to remain at headquarters during hours prescribed by the Chief Electoral Officer be included in the Elections Act. As it presently states, Section 19(2) is restrictive, notwithstanding that Returning Officers are instructed to remain in their offices during normal business hours and also in the evenings as required.

Recommendation:

21. Section 19(2) should be amended to read:

19(2) In addition to the hours prescribed by the Chief Electoral Officer, either the Returning Officer or the Election Clerk, or both of them shall remain continuously on duty in the Returning Officer's headquarters during the hours that

a) the Revising Officer sits for the revision of the list of electors;

b) the advance polls are open;

c) the polls are open on ordinary polling day.

Qualifications of Election Officers

Presently the qualification of election officers is governed by Section 165(1) of the Elections Act which states:

> No person shall be appointed as a Returning Officer, Election Clerk, Enumerator, Supervising Deputy Returning Officer, Deputy Returning Officer, or Revising Officer, unless he is qualified as an elector in the Province.

It is suggested that poll clerks also be included within this section, particularly in view of the advisability that they be qualified as an elector which includes that they be at least 18 years of age, and recognizing that the poll clerk is empowered by the Elections Act to act as Deputy Returning Officer in certain circumstances (ss 73-75).

Recommendation:

22. Section 165(1) of the Elections Act should be amended to include poll clerks.

XIV LEVEL ACCESS

It its 1986 report, the Election Commission had recommended level access to the offices of Returning Officers and, for all Advance and Special polls.

Amendments to the Elections Act were passed in 1987, providing a requirement that polling stations during the Advance and Special polls be accessible (Section 127(2) and 138A(3A)).

As a matter of policy, all Returning Officers have been instructed to obtain, if at all possible, accessible premises.

During the 1988 general election, there were situations which necessitated construction of ramps in order to make the polling stations and/or Returning Offices accessible.

The Elections Act also provides that on ordinary polling day one or more polling stations in an electoral district must be accessible (s.84(1)). The Chief Electoral Officer encourages increased accessibility in order that as many polling stations as possible on election day will have level access.

XV ELECTION FINANCES - REPORTING BY OFFICIAL AGENT OF CANDIDATE

Section 164C(1) of the Elections Act provides that the Official Agent for each candidate is required to file a report of election expenses within 60 days after the day fixed for the return of the writ. It has been a practice of the Chief Electoral Officer to extend the time period from 60 to 120 days to facilitate required auditing and accordingly it is suggested that Section 164(C)(1) be amended accordingly.

With respect to the 1988 general election, inordinate delays in filing by several official agents occurred, notwithstanding the sixty day extension. It is the position of the Chief Electoral Officer that there must be strict compliance with Section 164(c)(1). In the future, non-compliance will result in implementation of the enforcement provisions of the Elections Act.

Recommendation:

23. Section 164C(1) of the Elections Act should be amended to extend the time for filing the candidate's expense return from 60 to 120 days from the day fixed for the return of the Writ.

XVI BALLOTS AND DIRECTIONS TO ELECTORS

Presently, Section 77 of the Elections Act provides that the ballot must conform to Form 32 as contained in the Elections Act and include the candidate's address. The form of the ballot paper as outlined in Form 32 and also Form 34 which is the directions to electors presently contains three names:

1. Wilfred Renfrew Brown;
2. Charles P. Mombourquette;
3. John Thomas Smith

Queries were raised during the 1988 general election both with respect to the fact that the Form 32 and Form 34 did not contain a surname of a female and secondly, by coincidence, two of the three surnames were those of candidates in the 1988 general election. This matter was discussed by members of the Election Commission and it was agreed that Form 32 and Form 34 should be amended to eliminate any reference to the surnames as presently exists. This would be replaced by another format with more specific instructions to the elector to mark an "x" (cross, checkmark or line) within the circle opposite the candidate of his/her choice.

In addition, the issue of the address appearing on the ballot has been investigated and also discussed by members of the Election Commission. It has been agreed by members of the Commission that it is no longer appropriate for the address to appear on the ballot. Only in the provinces of Prince Edward Island and British Columbia, as well as Nova Scotia does the election legislation presently provide for the address to appear on the ballot. It would therefore be consistent with legislation across Canada to remove the reference to an address. This would also necessitate amending Form 21 which is the nomination paper in order to clarify that the address will not appear on the ballot. Form 32 should be appropriately amended to indicate that what appears on the ballot is the name of the candidate as well as the name of the recognized party or the word

"independent", as the case may be.

Recommendations:

24. Section 77 of the Elections Act should be amended to exclude the address of the candidate on the ballot.

25. Form 32 (Form of Ballot Paper), Form 34 (Directions to Electors) should be amended to exclude references to the surnames presently noted, and an address on the ballot. In addition, Form 21 (Nomination Paper) should be amended to exclude a reference to an address on the Ballot.

XVII SUMMARY OF RECOMMENDATIONS

Efficiency and Technical Training

1. More intensive training and improved operational manuals for Returning Officers, Deputy Returning Officers, Enumerators and Official Agents.

Elections Act

1. Section 26 of the Elections Act should be repealed, subject however, to the Legislative Assembly deciding what, if any, restrictions should apply to prisoner voting.

2. Remanded inmates should be provided the right to vote, and appropriate administrative procedures should be implemented to enfranchise these individuals. The following is recommended:
   (a) amendment of Section 26(d) of the Elections Act, to clarify that remanded inmates have the right to vote.
   (b) amendment of the proxy provisions (SS.93-98 of the Elections Act) or legislatively provide for a different mechanism to enfranchise the remanded inmate.
   (c) amendment of the 'ordinary residence' provisions to include remanded prisoner (S. 27 of the Elections Act).

3. With respect to the right to vote of prisoners under sentence, the Legislative Assembly should decide what, if any, restrictions should apply, and accordingly either repeal or amend Section 26(d) of the Elections Act. If it is decided that inmates under sentence should be enfranchised, the Elections Act should be amended to provide for the necessary administrative mechanism and governing residency requirements.

4. Section 26(e) of the Elections Act should be repealed.

5. Section 26(c) of the Elections Act should be repealed.

6. Section 26(a) and Section 26(b) of the Elections Act should be repealed and Section 152(2) be amended to provide where an equality of votes exists, the tie is settled by drawing of one name from among the names of all candidates in that constituency.

7. Section 25(1)(b) of the Elections Act should be amended to remove the entitlement of British Subjects who are not Canadian citizens to vote.

8. Section 41(1) of the Elections Act should be clarified by the elimination of the words "the name and particulars of" (and amending the concluding words of Section 41(1) to conform to the beginning), thereby clarifying that the Returning Officer's authority is to appoint Revising Agents when the Returning Officer becomes aware that a substantial number of electors have been omitted from a list of electors or incorrectly described on a list, although the Returning Officer may not have the knowledge of the actual names of those electors.

9. (a) Section 41(3) of the Elections Act should be amended by including a new subsection (a) to provide for Revising Agents to use all diligence to obtain the names and particulars of visiting each dwelling place and if the Revising Agents are unable to obtain the names and particulars by the visits, then they may obtain them from any other sources of information; (b) Section 41(3)(a), 41(3)(b) and 41(3)(c) of the Elections Act should be renumbered as Section 41(3)(b), 41(3)(c) and 41(3)(d).

10. The hours of the revisal sittings should be concurrent with the hours of the special poll (Sections 48 and 138A).

11. Section 48 of the Elections Act should be amended to provide for the Revising Officer to also sit on Saturday, the 10th day before ordinary polling day and also the revisal sitting hours should be amended in order to be consistent with the hours of the special poll from 8 a.m. to 8 p.m.

12. Section 128 and Section 138A should be amended to provide for the hours of the special and advance polls to be the same and changed to 8 a.m. to 8 p.m.

13. Section 128 of the Elections Act should be amended to provide for the commencement of the advance poll on Thursday, the 5th day before ordinary polling day (instead of Friday, the 4th day before ordinary polling day).

14. Section 91 of the Elections Act should be amended to provide for the issuance of transfer certificates up to 8 p.m. on the 10th day before ordinary polling day.

15. Section 93 and Section 94 of the Elections Act should be amended to include the right to vote by proxy of an elector who is unable to vote at the special, or advance polls or on ordinary polling day by reason of business commitments or employer's directors. The application for proxy (Form 39) would accordingly require amendment including the confirmation certificate and a provision specifying that the elector declare that he/she is unable to vote at the special or advance polls or on ordinary polling day.

16. Section 94(2) of the Elections Act should be amended to specify that the application for proxy applies to a resident in a home for the aged approved or a nursing home

licensed under the Homes for Special Care Act and Form 39 should be amended accordingly.

17. Section 160(1) of the Elections Act should be amended to provide;

160(1) Unless, excluded by the Chief Electoral Officer, upon specific written application, any printed material of an advertising or publicity nature relating to an election shall bear the name and address of the printer and the person on whose behalf it was printed or published.

18. An additional provision should be added:

160(2) Notwithstanding any authorized exclusion, any and all literature, objects or materials used for the purpose of promoting or opposing directly to indirectly the election of a candidate, shall be an election expense as defined in Section 2(7A) and be governed by the provisions of the Elections Act, including but not limited to Sections 159-164.

19. Sections 160(2) and 160(3) should be renumbered.

20. Section 178 of the Elections Act should be amended to provide that clause (c) be applicable not only on ordinary polling day but also during the special and advance polls.

21. Section 19(2) should be amended to read:

19(2) In addition to the hours prescribed by the Chief Electoral Officer, either the Returning Officer or the Election Clerk, or both of them shall remain continuously on duty in the Returning Officer's headquarters during the hours that

a) the Revising Officer sits for the revision of the list of electors;

b) the advance polls are open;

c) the polls are open on ordinary polling day.

22. Section 165(1) of the Elections At should be amended to include poll clerks.

23. Section 164C(1) of the Elections Act should be amended to extend the time for filing the candidate's expense return from 60 to 120 days from the day fixed for the return of the Writ.

24. Section 77 of the Elections Act should be amended to exclude the address of the candidate on the ballot.

25. From 32 (Form of Ballot Paper), Form 34 (Directions to Electors) should be amended to exclude references to the surnames presently noted, and an address on the ballot. In addition, Form 21 (Nomination Paper) should be amended to exclude a reference to an address on the Ballot.

XVIII **SCHEDULE "A"**

Notice of Enumeration Card

ELECTION DAY —	
YOU VOTE AT POLL NO. —	
ADVANCE POLL — (If unable to vote on election day at ordinary poll)	
SPECIAL POLL — (If unable to vote at ordinary poll or advance poll)	
REVISAL SITTINGS — (For additions or changes to list of electors)	
RETURNING OFFICER —	